Filed 7/27/09 Food Makers Bakery Equipment Co. v. The Redevelopment Agency of the City of Monrovia CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FOOD MAKERS BAKERY EQUIPMENT, INC., Plaintiff and Appellant, v. THE REDEVELOPMENT AGENCY OF THE CITY OF MONROVIA, Defendant and Respondent.	B210931 (Los Angeles County Super. Ct. No. BS113595)

APPEAL from a judgment of the Superior Court of Los Angeles County, David P. Yaffe, Judge. Affirmed.

Nossaman LLP, K. Erik Friess, Rick E. Rayl and Bradford B. Kuhn for Plaintiff and Appellant.

Richards, Watson & Gershon, Thomas M. Jimbo and Michael F. Yoshiba for Defendant and Respondent.

Plaintiff and appellant Food Makers Bakery Equipment, Inc., formerly known as Davrik Systems, Inc., doing business as Food Makers Equipment (Tenant), appeals from a judgment of dismissal following an order sustaining a demurrer in favor of defendant and respondent The Redevelopment Agency of the City of Monrovia in this action for inverse condemnation and relocation benefits. The owner of real property that was leased to Tenant sold the property to the Agency rather than negotiate an extension of the lease with Tenant. On appeal, Tenant contends that it was forced to relocate as a result of the Agency's acquisition of the property, and therefore, it is entitled to compensation for the loss of business goodwill through inverse condemnation and to relocation benefits as a displaced person under Government Code section 7260. We conclude that the Agency's acquisition of the property was not the proximate cause of Tenant's relocation. Therefore, the judgment is affirmed.

FACTS AND PROCEDURAL BACKGROUND

In 1994, Tenant leased a large industrial property in Monrovia from Foodmaker's Equipment Sales & Service, L.L.C. (Landlord) for the re-manufacturing and storage of food making equipment. On April 1, 2007, Tenant and Landlord executed a lease agreement providing for a one-year term. The lease contained the following option to extend the lease: "[Tenant] and [Landlord] shall attempt to negotiate, in good faith, regarding an 'extension' of this Lease. Nothing is expressed, nor implied as to the length or monetary terms thereof. Only a written extension, signed by both parties will be binding. There is no express, nor implied agreement to use market rent, any particular 'cost of living' index, or any formula, evaluative tool, for such purposes. There is no 'guarantee' that the parties will, in fact, agree to any extension of the Lease."

The property is located in an area which the Agency identified for redevelopment. After the Agency purchased an adjacent property, Landlord believed the property would be condemned to implement redevelopment plans for the adjacent property. In April 2007, Landlord asked the Agency about its plans. On July 3, 2007, the Agency offered to

purchase the Landlord's property on the condition that the property be vacant at the close of escrow, in order that the Agency would not incur any tenant relocation expenses.

The Agency entered into a purchase agreement with Landlord dated September 4, 2007. The agreement stated: "The Lease shall be terminated prior to the Closing and the Property shall be delivered free and clear of the Lease and any other leases and/or rights of occupancy."

In order to deliver the property without any tenants, Landlord did not attempt to negotiate an extension of the lease term with Tenant. Tenant made a written request for the Agency to process a claim for relocation assistance, but the Agency did not respond.

On March 6, 2008, Tenant filed a complaint against the Agency for declaratory relief, inverse condemnation, and for a writ of mandate to compel the Agency to provide relocation assistance and benefits. Tenant alleged that if the Agency had not purchased the property, it was reasonably probable that Tenant would have been able to negotiate an extension of the lease. An amended complaint was filed on April 17, 2008.

The Agency filed a demurrer on the grounds that (1) Tenant had no enforceable contractual option to renew the lease agreement, and therefore, no compensable property right upon which to base an inverse condemnation claim, and (2) Tenant was not a "displaced person" under the regulations concerning relocation benefits, because Tenant did not move from the property as a direct result of the Agency's acquisition of the property. Tenant filed an opposition arguing that it had a compensable interest and a reasonable probability of remaining at the site absent the Agency's purchase of the property. The Agency filed a reply.

On March 11, 2008, Landlord executed a grant deed to transfer title to the Agency. Tenant was required to vacate the property and relocate its business on March 31, 2008. On April 3, 2008, the Agency caused the grant deed to be recorded.

A hearing on the demurrer was held on June 20, 2008. The trial court concluded that the cause of action for inverse condemnation belonged in another department of the superior court. The court sustained the demurrer as to the causes of action for declaratory relief and a writ of mandate with leave to amend on the ground that Tenant occupied the

property under a lease that expired March 31, 2008. The Agency acquired the property prior to the expiration of the lease but did not require Tenant to vacate until after the expiration of the lease. Therefore, Tenant was not entitled to relocation benefits.

Tenant filed a second amended complaint on June 30, 2008, adding allegations to show the Agency's conduct was designed to induce Landlord to breach its obligation to negotiate with Tenant in good faith and have Tenant evicted in order to facilitate the purchase of the property for a public purpose. Tenant alleged on information and belief that the Agency knew or should have known the lease obligated the Landlord to negotiate in good faith with Tenant concerning an extension of the Lease.

The Agency filed a demurrer to the causes of action for declaratory relief and writ of mandate on the same grounds as the previous demurrer. Tenant opposed the demurrer on grounds including that eligibility for relocation benefits was triggered by the initiation of negotiations to acquire the property and not recordation of the grant deed. In addition, Tenant argued that causation of the displacement was a factual issue that could not be resolved by demurrer. The Agency filed a reply.

After a hearing on August 6, 2008, the trial court sustained the demurrer without leave to amend on the ground that Tenant did not have a leasehold interest sufficient to support the claim for relocation benefits. The court stated that the lease agreement makes clear that Tenant did not have a reasonable expectation the lease would be renewed. The parties stipulated that the court could rule on the Agency's original demurrer to the cause of action for inverse condemnation. The court further found that Tenant did not have a viable claim in eminent domain and sustained the demurrer to the inverse condemnation claim without leave to amend. The court granted the Agency's motion to dismiss the complaint. The court entered judgment in favor of the Agency on August 26, 2008. Tenant filed a timely notice of appeal.

DISCUSSION

Standard of Review

"In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Eminent Domain

Tenant contends that the Agency's conduct in acquiring the property was the substantial equivalent of condemnation, without which there was a reasonable probability that a lease extension would have been negotiated, and therefore, Tenant is entitled to compensation for the loss of goodwill. We conclude that the Agency's conduct was not the substantial equivalent of condemnation and was not the cause of Tenant's relocation.

California Constitution, article 1, section 19 provides just compensation must be paid to the owner of property taken for public use. (*San Diego Metropolitan Transit Development Bd. v. Handlery Hotel, Inc.* (1999) 73 Cal.App.4th 517, 529 (*Handlery*).) This provision authorizes a public entity to institute eminent domain proceedings to acquire public property and a landowner to institute inverse condemnation proceedings for

a claimed taking of property. (*Ibid*.) "Both types of actions are governed by the same principles. [Citations.]" (*Ibid*.)

A right of compensation for inverse condemnation exists for unreasonable precondemnation conduct by a public entity that does not amount to an actual taking of property. (*Handlery*, *supra*, 73 Cal.App.4th at p. 529.) "'[W]hen the condemner acts unreasonably in issuing precondemnation statements, either by excessively delaying eminent domain action or by other oppressive conduct, our constitutional concern over property rights requires that the owner be compensated. This requirement applies even though the activities which give rise to such damages may be significantly less than those which would constitute a de facto taking of the property. . . .'' [Citation.] To demonstrate entitlement to damages for unreasonable precondemnation conduct, the court stated: '[A] condemnee must be provided with an opportunity to demonstrate that (1) the public authority acted improperly either by unreasonably delaying eminent domain action following an announcement of intent to condemn or by other unreasonable conduct prior to condemnation; and (2) as a result of such action the property suffered a diminution in market value.' [Citations.]" (*Id.* at p. 530.)

"Recovery under this theory requires some 'direct' and 'special' interference with the landowner's use of the property. '"In order to state a cause of action for inverse condemnation, there must be an invasion or appropriation of some valuable property right which the landowner possesses and the invasion or appropriation must directly and specially affect the landowner to his injury. [Citation.]"' [Citations.] 'Absent a formal resolution of condemnation, the public entity's conduct must have "significantly invaded or appropriated the use or enjoyment of the property.' [Citation.] In other words, the affirmative conduct of the public entity must have significantly negatively affected the use or enjoyment of the property, lowering its value, physically burdening it, and/or decreasing the income it produced. [Citation.] . . . Whether there has been unreasonable conduct by the condemner and what constitutes a direct and substantial impairment of property rights for purposes of compensation constitute questions of fact. [Citations.]" (*Handlery*, *supra*, 73 Cal.App.4th at pp. 530-531.)

When property subject to an unexpired lease is acquired through eminent domain for public use, the lease terminates pursuant to Code of Civil Procedure section 1265.110. (*Peter Kiewit Sons' Co. v. Richmond Redevelopment Agency* (1986) 178 Cal.App.3d 435, 442 (*Peter Kiewit*).) "When condemnation terminates a tenancy, the lessee is ordinarily entitled to share in the condemnation award to compensate for the value of his or her leasehold interest. [Citations.]" (*Redevelopment Agency of San Diego v. Attisha* (2005) 128 Cal.App.4th 357, 366 (*Attisha*).) When the real property is simply sold to the public agency subject to an unexpired lease term, the new owner becomes the landlord by operation of law and the lease continues in force for its full term. (*Peter Kiewit, supra,* at p. 441.) Code of Civil Procedure section 1265.110 does not apply to a negotiated purchase agreement, "unless the conduct of the acquiring public entity is the 'substantial equivalent' of condemnation and fairness requires applying section 1265.110 to the acquisition by purchase." (*Peter Kiewit, supra,* at p. 442, fn. omitted.)

However, when a private party terminates a license as an inducement to a public entity to enter into a lease of its property without an actual or implied threat of condemnation by the public agency, then the agency's conduct is not the proximate cause of the licensee's loss. (*Pacific Outdoor Advertising Co. v. City of Burbank* (1978) 86 Cal.App.3d 5, 12-14.) "The mere fact that respondent has the power of eminent domain, when in fact such power is neither exercised nor remotely threatened, is insufficient to render it liable in an inverse condemnation action every time it deals in an open market transaction which results in leases or licenses being broken. The 'power to condemn' cannot in and of itself constitute proximate cause where there is an intervening force or factor. In an open market transaction the 'power to condemn' is not enough—there must be evidence of implied or actual threat of condemnation, so that the ultimate result is a foregone conclusion. . . . It is a mixed question of law and fact as to whether or not the termination in question occurred 'in the broad exercise of the power to condemn private property for public use,' or in the context of an open market transaction." (*Id.* at p. 12, fn. omitted.)

In this case, no cause of action for inverse condemnation has been stated, because the Agency's conduct was not the substantial equivalent of condemnation as a matter of law. The Agency never threatened to condemn the property. The bare facts that the Agency identified the area for redevelopment and purchased a neighboring property are insufficient for a reasonable trier-of-fact to infer there was a threat of condemnation. The fact that the Agency passed a resolution approving the purchase agreement to acquire the property at issue based on finding the purchase necessary to implement the redevelopment plan is also insufficient for a reasonable trier-of-fact to infer that the purchase agreement resulted from an implied threat of condemnation. The Landlord approached the Agency about plans for the property. There is no allegation that the Landlord did not act freely in its own interest. The Agency's offer to purchase property on the condition that it be delivered vacant is not the substantial equivalent of condemnation. Under the circumstances alleged, the Agency's purchase was clearly an open market transaction. Moreover, the Agency's conduct did not cause the Tenant's loss. The Landlord's decision to sell the property and arguable breach of a contractual obligation to negotiate a lease extension were intervening factors.

The cases relied upon by Tenant, *Redevelopment Agency v. Diamond Properties* (1969) 271 Cal.App.2d 315, 321 and *Concrete Service Co. v. State of California ex rel. Dept. Pub. Wks.* (1969) 274 Cal.App.2d 142, 147, are inapposite. In *Diamond Properties*, actual condemnation proceedings were instituted, and in *Concrete Services*, the agency gave notice to the tenant and landlord of its intent to condemn, but subsequently negotiated a private purchase from the owner and terminated the tenancy after the acquisition.

The Agency correctly relies upon *Handlery*, *supra*, 73 Cal.App.4th at page 523 to support a finding that the Agency did not engage in any precondemnation conduct that deprived Tenant of a compensable interest in property. In *Handlery*, the hotel operated a golf course on property adjacent to the hotel for 40 years, pursuant to a long term lease. In 1988, the owners of the golf course property formed a partnership to develop it. The local transit authority sought a permanent easement for a transit project compatible with future development of the project. In 1992, the hotel and the partnership began negotiations for a

new lease pending the ultimate development. The transit authority agreed to pay the cost of redesigning the golf course for the partnership. In 1994, the partnership told the hotel that it was pursuing other options and intended to reconstruct the golf course away from the hotel facilities. The partnership and the hotel negotiated a temporary six-month lease and several short-term extensions of the lease that were set to terminate the day the transit authority took possession. The transit authority filed a condemnation action and took possession of the course easement in July 1995. The partnership decided to close the course in September 1996 and terminated the hotel's lease by letter. At trial, the trial court granted the transit authority's motion for judgment under Code of Civil Procedure section 631.8. The court found that the transit authority's actions did not constitute unreasonable precondemnation conduct or inverse condemnation, the transit authority's actions did not cause the hotel to lose any good will, and the hotel's operation of the course ended with the expiration of the long-term lease.

On appeal, the hotel argued that by providing assistance to reconfigure the golf course, the transit authority's precondemnation conduct led the partnership to terminate negotiations with the hotel and deprived the hotel of its opportunity to enter into a long-term lease to continue operating its golf course business. The appellate court noted the standard of review was substantial evidence and found that the hotel had lost no compensable property right. (*Handlery, supra*, 73 Cal.App.4th at p. 531.) "A hypothetical future lease resting on the 'probability of renewal,' unlike a contractual option to renew an existing lease, is not a compensable property right [citation], because its potential execution rests upon the commercial vagaries of the market, its players and their competitive interests. Granted, '[t]here is some authority for the proposition advanced by appellant—that a tenant's reasonable expectation of renewal of a lease be considered as an element of value in condemnation proceedings. But the weight of authority, with which we are in accord, holds to the contrary. A tenant's right of renewal of a lease refers to a legal right, and this exists only when the lease expressly grants to the tenant the option to renew the lease at the end of its term. A mere expectation, or even probability, that the lease will be renewed based upon past practice and present good relations between

landlord and tenant, is not a legal right of renewal. It is nothing more than a speculation on chance. Intentions which are subject to change at the will of a landlord do not constitute an interest in land so as to confer upon the tenants something to be valued and compensated for in a condemnation action.' [Citations.] Consequently, Handlery's hypothetical lease resting on a speculative expectation of renewal is not compensable." (*Handlery, supra,* at pp. 531-532, fns. omitted.)

"Indeed, substantial evidence supports the trial court's conclusion Handlery's expectation of renewal was speculative at best. Handlery's interest in the property would have ended any way upon development of the property; the owners wished to regain control of the property; Handlery had made a 'low ball' lease proposal that was not close to what the owners had expected; and Handlery faced an uphill battle with [a portion of the partnership whose consent was required for the agreement]." (*Handlery, supra,* 73 Cal.App.4th at p. 532, fn. 14.) "Needless to say, '[t]here is no recovery via condemnation for the taking of a pipe dream.' [Citations.]" (*Id.* at p. 532, fn. 15.) "Without a vested, legally enforceable property interest, there is no basis for compensation in an inverse condemnation proceeding for loss of future business. [Citation.] . . . Without an option to renew, Handlery had no legally protectible property interest in the continued operation of the course after the 50-year lease term expired naturally. Handlery's mere expectation is not one which is compensable in an inverse condemnation proceeding." (*Id.* at pp. 532-533.)

"[W]here the lease term expires naturally according to its terms, unaffected by condemnation or precondemnation conduct, there is no causal relationship between the later taking of the real property and the demise of the business. A fortiori, there has been no related loss." (*Handlery, supra,* 73 Cal.App.4th at p. 533.) The *Handlery* court distinguished the case from "[a] case where the impending expropriation constituted the sole reason for shortening what would otherwise have been a longer lease term in a well-established and mutually satisfactory lessor-lessee relationship, giving rise to recovery of business losses beyond the expiration of the original lease term." (*Id.* at p. 538, fn. 22.)

In this case, the Landlord arguably breached its agreement to negotiate a lease extension in good faith and the lease expired according to its terms. The lease was not

terminated as a result of condemnation or precondemnation conduct by the Agency, and the Landlord's actions were an intervening factor. Tenant had no vested, legally enforceable interest in the property at the time the Agency took possession of the property, and therefore, no loss was caused by the Agency.

Attisha, *supra*, 128 Cal.App.4th at page 362 is distinguishable. In *Attisha*, the agency filed a complaint in eminent domain against the owners of real property and the tenants operating a grocery and liquor store on the premises. The tenants had two years remaining on their lease and an option to renew the lease for another five years. At trial, it was undisputed that the tenants were entitled to compensation for the loss of goodwill; only the value of that goodwill was disputed. The *Attisha* court held that the value of goodwill could include losses beyond the expiration of the lease, especially if the pending acquisition was the sole reason for shortening the lease term in a well-established and mutually satisfactory lessor-lessee relationship. The court concluded that it was for the trier-of-fact to determine whether there was a reasonable probability of a lease renewal based on the facts of the case. In the instant case, however, there was no condemnation or precondemnation activity on the part of the Agency, and therefore, no liability for compensation.

Relocation Expenses

Tenant contends that it is a displaced person entitled to relocation benefits under Government Code section 7260 despite the expiration of its lease term, because the displacement was caused by the Agency's acquisition of the property. We disagree.

Separate from the policies and purposes of eminent domain law, the California Relocation Assistance Law (CRAL) (Gov. Code, § 7260 et seq.) provides relocation benefits to persons displaced by state or local acquisitions. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 101 Cal.App.4th 1317, 1326 & fn. 4 (*Kong*).) A "displaced person" is defined in pertinent part as "[a]ny person who moves from real property, or who moves his or her personal property from real property . . . [a]s a direct

result of a written notice of intent to acquire, or the acquisition of, the real property, in whole or in part, for a program or project undertaken by a public entity or by any person having an agreement with, or acting on behalf of, a public entity." (Gov. Code, § 7260, subd. (c)(1)(A)(i).)

"The benefits payments are intended to compensate a displaced person for, among other things, 'actual and reasonable expenses in moving himself or herself, his or her family, business, or farm operation, or his or her, or his or her family's, personal property.' [Citations.]" (*Kong, supra*, 101 Cal.App.4th at p. 1326.)

"Actual exercise of the power of eminent domain is not prerequisite to eligibility for relocation benefits. [Citation.]" (*Peter Kiewit, supra,* 178 Cal.App.3d at p. 444.) The determination is based on whether there is "a causal connection" between the public entity's acquisition of the property and the displacement. (*Ibid*.)

"[A] tenant holding under a lease which has not expired at the time property is acquired for public use and who continues lawfully in possession of the premises after termination of the lease will qualify as a 'displaced person' under section 7260, subdivision (c)." (*Peter Kiewit, supra,* 178 Cal.App.3d at p. 445.)

A tenant in possession at the time of acquisition who remains in possession unlawfully after the expiration of its lease and is subsequently evicted is not a displaced person. (*Peter Kiewit, supra*, 178 Cal.App.3d at p. 445.) Similarly, if a tenant fails to pay rent, receives a three-day notice to pay or quit, and elects to quit the premises, then the departure is the result of the tenant's breach of the lease agreement and not the acquisition or a written order from a public entity to vacate the real property for public use. (*Ibid*.)

In *Peter Kiewit*, the redevelopment agency purchased property in 1977 that was occupied in part by a tenant whose lease expiration date was in 1980. (*Peter Kiewit, supra*, 178 Cal.App.3d at pp. 438-439.) The agency and the tenant attempted to negotiate an extension agreement without success. When the tenant failed to vacate the premises and tendered an amount as rent, the agency declined to accept the rent and instituted unlawful detainer proceedings. The court concluded that the cause of the tenant departure

was not the agency's acquisition of the property, but the tenant's unlawful possession of the premises after the expiration of the lease. (*Id.* at p. 445.)

In this case, Tenant was not forced to relocate as a direct result of the Agency's acquisition of the property. The Landlord's decision to sell the property instead of negotiating an extension of the lease, possibly in breach of the lease agreement, was the cause of Tenant's relocation.

In its reply brief, Tenant contends that the Agency acquired the property in September 2007. However, it is clear from the allegations of the complaint that the Agency purchased the property as of the date that it was free of any leases or liens and the grant deed was recorded after the closing, which took place after the expiration of Tenant's lease. The Agency took possession of the property in April 2008, after the lease had expired.

The cases that Tenant relies upon, *Kong, supra*, 101 Cal.App.4th 1317 and *Albright v. State of California* (1979) 101 Cal.App.3d 14, 17, are distinguishable. In both cases, a tenant who was entitled to relocation benefits entered into a new lease with the property owner, and the court in each case found the new lease did not extinguish the tenant's right to relocation benefits. In *Kong*, a donut shop was operating under a sublease set to expire on December 31, 1996, with an option to extend the lease to December 31, 1998. (*Kong, supra*, at p. 1320.) In July 1993, the agency notified the shop that it was a tenant in a redevelopment project area and would have to eventually move. The agency stated in the notice that the shop would be eligible for relocation advice and might be eligible for relocation benefits. The following month, the agency acquired the property with public funds for a public purpose through condemnation or the threat of condemnation. Approximately six month later, the agency served the shop with a notice to vacate possession in 90 days. At this point, the shop was clearly entitled to receive relocation benefits. The agency sold the property to a private developer, who was willing to allow the shop to continue its business, subject to an agreement to vacate on six months notice. In June 1994, to facilitate the shop's operation, the master lease holder entered into an agreement with the developer for a one year tenancy, subject to termination by the landlord

upon six months' written notice, and if not terminated, the lease would automatically renew for additional terms. In early 1999, the developer attempted to terminate the lease. When the shop failed to vacate, the developer filed an unlawful detainer action and the shop was evicted. The shop filed a claim for relocation benefits.

The appellate court found that the original master lease terminated as a result of the agency's taking of the property under Code of Civil Procedure section 1265.110, which terminated the sublease as well. (*Kong*, *supra*, 101 Cal.App.4th at p. 1328.) The court concluded that if the shop had relocated in 1994 when the developer acquired the property, then it would have been entitled to relocation benefits. (*Id.* at p. 1329.) The court concluded that the shop's entitlement to benefits was not affected by the mutually beneficial agreement allowing the shop to conduct business on the premises until the developer required the property for the redevelopment project.

In *Albright v. State of California, supra,* 101 Cal.App.3d at page 17, the state acquired property through condemnation proceedings subject to several leases. The leases were set to expire later in the year. The state provided relocation assistance to tenants who moved out. Upon the expiration of their leases, some tenants entered into short-term leases with the state and were later issued termination notices. (*Id*. at p. 20.) The appellate court found that the tenants were entitled to relocation benefits upon termination of the leases, despite having entered into leases with the state after the acquisition.

In this case, Tenant was never entitled to relocation benefits and did not enter into any new lease. *Kong* and *Albright* have no application to this case.

Eligibility for Benefits After Initiation of Negotiations

Tenant contends that under California Code of Regulations, title 25, section 6034, it became eligible for relocation benefits when the Agency initiated negotiations to purchase the real property. This is incorrect.

The California Code of Regulations, title 25, section 6034, subdivision (a), provides in pertinent part: "Relocation assistance and benefits shall be available to : [¶] (1) Any

person who occupies property from which he will be displaced. [¶] . . . [¶] (3) Any person who moves from real property as a result of its acquisition by a public entity whether the move is voluntary or involuntary. [¶] (4) Any person who, following the initiation of negotiations, moves as the result of the pending acquisition. [¶] (5) Any person who moves as the result of pending acquisition, rehabilitation or demolition by a public entity either following receipt of a Notice of Intent to Displace [] or as a result of inducement or encouragement by the public entity."

It is clear from the plain language of the regulation that eligibility for benefits is triggered not merely by the initiation of negotiations, but also requires a move as a result of a pending acquisition. Tenant did not move as a result of the pending acquisition. Tenant moved after the acquisition, as a result of the expiration of its lease.

DISPOSITION

The judgment is affirmed. Respondent Redevelopment Agency of the City of Monrovia is entitled to costs on appeal.

KRIEGLER, J.

I concur:

TURNER, P. J.

MOSK, J., Dissenting

I dissent.

Facts[1]

Plaintiff alleges that it had been leasing property from the landlord since 1994 and operating a successful business on the premises. On April 1, 2007, it entered into a one year lease with a provision that the landlord negotiate in good faith an extension of the lease. Plaintiff further alleges that absent the involvement of the defendant Redevelopment Agency there was no reason to believe that the landlord would not extend the lease at the end of the term of the April 1, 2007 lease.

Had the defendant Redevelopment Agency purchased, or given notice of the intent to purchase, the property for a public purpose when the lease was in effect, and plaintiff permanently displaced during the term of its lease, there is no doubt that defendant Redevelopment Agency would have to pay plaintiff certain relocation expenses. (Gov. Code, § 7260 et seq. [California Relocation Assistance Law or CRAL]; Cal. Code Regs. Tit. 25, § 6000, et seq.) A person's eligibility for relocation benefits occurs when that person is actually displaced. (*Superior Strut & Hanger Co. v. Port of Oakland* (1977) 72 Cal.App.3d 987, 999.) Here any displacement took place on the date the lease terminated. Plaintiff, however, had requested relocation benefits earlier—during the term of the lease—because "of the enormity of the task involved in relocating a large business like [plaintiff's]." Defendant Redevelopment Agency refused to allow plaintiff to remain on the property past the lease term unless plaintiff signed a waiver of relocation benefits.

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1 The following facts are based on the allegations of the operative complaint.

Plaintiff alleges defendant Redevelopment Agency in July of 2007 made an offer to the landlord to purchase the property for a public purpose—a redevelopment project. In order to avoid the payment of relocation expenses, that offer provided that it was "subject to the condition that the property be delivered vacant at the close of escrow." On September 4, 2007, landlord and defendant entered into a Purchase and Sale Agreement and Joint Escrow Instructions whereby the landlord was to sell the property to defendant. The agreement provided that plaintiff's lease with defendant "shall be terminated prior to the Closing and the Property shall be delivered free and clear of the Lease and any other leases and/or rights of occupancy." On January 8, 2008, plaintiff notified defendant Redevelopment Agency that plaintiff learned of the agreement and of defendant Redevelopment Agency's insistence that the landlord not negotiate a lease extension with the plaintiff; accordingly plaintiff was forced to relocate.

Plaintiff alleges that on March 11, 2008, while its lease was still in effect, landlord executed the grant deed to transfer the property to defendant Redevelopment Agency. That deed was recorded on April 3, 2008.

Plaintiff alleges that defendant Redevelopment Agency intended to "evict" plaintiff from the property to facilitate its acquisition of it for a public purpose by:

"(a) Negotiating the purchase of the Property while knowing Food Makers was a long-term tenant;

(b) Inducing the Property Owner to breach its obligation to negotiate in good faith with Food Makers regarding another extension of its lease;

(c) Conditioning its purchase of the Property on the Property Owner's not renewing Food Makers' lease and, instead, delivering the Property vacant in order to avoid paying relocation benefits and other compensation to Food Makers, even though the Agency knew it was acquiring the Property for a public purpose;

(d) Establishing the purchase price for the Property based on its being vacant, when the Agency knew the Property was occupied by a long-term tenant;

(e) Delaying the close of escrow for more than six months after signing the Purchase and Sale Agreement in order to ensure Food Makers' current lease term would expire;

(f) Delaying the recordation of the Grant Deed after accepting the deed and authorizing its recordation in order to wait out the expiration of Food Makers' current lease term; and

(g) Otherwise intentionally structuring the transaction in an effort to circumvent the Agency's legal obligation to pay Food Makers relocation expenses and other compensation."

Thus, among other things, plaintiff seeks a declaration that it "is entitled to relocation assistance, benefits, and payments from the Agency under the applicable law, including the Agency Rules and Regulations, in an amount to be proved at trial . . . ."

Demurrer

This case arises on the sustaining of a demurrer without leave to amend. "[W]e treat the demurrer as admitting all material facts properly pleaded . . . . [W]e determine whether the complaint states facts sufficient to constitute a cause of action." (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.)

Cause of Action

Plaintiff pleads, in effect, that during the term of its lease it had actual notice of the Redevelopment Agency's intent to acquire the real property for a program undertaken for a public purpose and that as a result plaintiff would be displaced. In other words, just the notice itself caused plaintiff to require relocation expenses. The statutory notice requirement can be waived, especially when as here, there was actual notice. (See *Gilmore v. Hoffmann* (1954) 123 Cal.App.2d 313, 320; 2 Schwing, Affirmative Defense (2009 ed.) Waiver, § 47.8, pp. 1324-1325.) Thus, plaintiff alleges that by virtue of the notice it was forced to relocate and therefore is entitled to the relocation expenses and assistance provide by statute. I deal with the relocation expenses under the statute

(CRAL), for the "[a]ctual exercise of the power of eminent domain is not a prerequisite to eligibility for relocation benefits." (*Peter Kiewit Sons' Co. v. Richmond Development Agency* (1986) 178 Cal.App.3d 435, 444.)

Under the CRAL, plaintiff would be entitled to relocation expenses if it could prove that the notice of acquisition by defendant Redevelopment Agency proximately caused plaintiff's displacement. (*Peter Kiewit Sons' Co. v. Richmond Development Agency*, *supra*, 178 Cal.App.3d at p. 444 ["The crucial issue in determining eligibility for benefits is whether there is a 'causal connection between the acquisition [by the public entity] and the displacement which brings into play the provisions'" of CRAL].) "The critical factor is not when the property was vacated but why it was vacated." (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 101 Cal.App.4th 1317, 1329.)

Plaintiff alleged that it was a tenant of the landlord since 1994, and thus had a long and established relationship with landlord. Landlord had agreed to negotiate in good faith the terms for renewal of the lease. Plaintiff reasonably expected that those negotiations would, more likely than not, result in renewal of the lease. The notice of acquisition and acquisition of the property by defendant Redevelopment Agency foreclosed those good faith negotiations, and thus caused plaintiff's displacement.

Defendant Redevelopment Agency argues, in effect, that even if its acquisition of the property was a but-for cause of plaintiff's displacement, the *proximate* cause of plaintiff's displacement was the expiration of the lease term. But causation is a question of fact. Plaintiff alleged, in effect, that it was more probable than not that the lease term would *not* have expired, and plaintiff would *not* have been displaced absent the Redevelopment Agency's notice of acquisition and acquisition of the property. (Cf. *Los Angeles Unified School Dist. v. Pulgarin* (2009) 175 Cal.App.4th 101 (*Pulgarin*) [school district's acquisition of property by eminent domain caused tenant's loss of goodwill although tenant had no written lease].)

Plaintiff also alleged facts indicating that the defendant Redevelopment Agency structured its acquisition of the property to avoid its obligations to pay relocation expenses under CRAL. If true, then the form of the RDA's acquisition should be

disregarded and the obligations to pay relocation expenses determined by looking at the substance of the transaction.

In *Concrete Service Co. v. State of California ex rel. Dept. Pub. Wks.* (1969) 274 Cal.App.2d 142, a condemning authority desired to acquire real property. (*Id.* at p. 145.) When it heard that the tenant was on a month to month lease, it purchased the real property and terminated the tenancy, thereby avoiding payment for the tenant's personal property. (*Ibid.*) The court refused to recognize this artifice and held that there was a condemnation of the real and personal property, requiring compensation for both. (*Id.* at p. 147.) In the instant case, according to plaintiff, defendant Redevelopment Agency concocted a scheme to use landlord-tenant laws to avoid payment of relocation expenses. Similarly, in another case, when owners of real property made transfers to avoid a city's action to merge properties, a court ignored the paper transfers of title in order to make sure the legislative purposes underlying the application of a statute were not violated. (*Kalway v. City of Berkeley* (2007) 151 Cal.App.4th 827, 834.)

Here, in substance as alleged by plaintiff, the RDA "acquired" the property during the term of the lease, and took the property subject to the landlord's obligation to negotiate a new lease in good faith. If defendant Redevelopment Agency had closed escrow when it transferred the deed, or even after the closing, as a successor to the seller, it then had the contractual obligation to negotiate a new lease in good faith. (See *Copeland v. Baskin Robbins* U.S.A. (2002) 96 Cal.App.4th 1251, 1257 [remedy for a breach of an express agreement to negotiate in good faith].) But it indicated it never intended to comply with this obligation.

This is not a case in which the defendant Redevelopment Agency acquired property subject to an existing lease, fulfilled the terms of the lease, and let the lease expire by its own terms. Nor is this a case in which the defendant Redevelopment Agency assumed a landlord's obligation to negotiate in good faith, fulfilled that obligation, and was unable to reach agreement on new lease terms. Here, plaintiff alleges that the defendant Redevelopment Agency, in effect, prevented the prior landlord from complying with its existing obligation to negotiate a lease renewal in good faith, and

repudiated any such obligation itself, to circumvent its statutory obligation to pay relocation expenses. Under the facts alleged, a reasonable trier of fact could conclude that the defendant Redevelopment Agency's notice of acquisition or acquisition was a proximate cause of plaintiff's displacement, and that plaintiff is therefore entitled to relocation expenses.

In *Peter Kiewit Sons' Co. v. Richmond Development Agency, supra,* 178 Cal.App.3d 445, a city redevelopment agency purchased property, some of which was occupied by a lessee. After efforts to renegotiate an extension of the lease failed, lessee did not vacate the property on the lease termination date. The agency filed an unlawful detainer action. The lessee sought its moving expenses. The court held that unlike a condemnation, the agency purchase of the property did not extinguish the lease and that the lessee was not entitled to relocation benefits because the cause of its displacement was the termination of the lease. That case is favorable to defendant Redevelopment Agency's position but not dispositive. In that case, the redevelopment agency acquired the property and complied with the terms of the existing lease. The agency did not engage "in a pattern of conduct designed to evict [the tenant] from the site." (*Id.* at p. 443.) Almost five years prior to the termination of the lease, the tenant arranged for a new site for its business. The court held that the actual cause of the tenant's departure was its "unlawful possession of the premises after expiration of its lease." (*Id.* at p. 445.) Unlike in the instant case, in *Peter Kiewit Sons' Co.* there was no indication that the agency had structured the purchase of the property to avoid relocation expenses or had interfered with any contractual duty to negotiate in good faith an extension of the lease.

In *Kong v. City of Hawaiian Gardens Redevelopment Agency, supra,* 101 Cal.App.4th 1317, a sublessee was allowed to remain on property acquired by a redevelopment agency for a public purpose. The agency argued that the sublessee was not entitled to relocation expenses because he was not required to vacate the leased premises until after the expiration of his sublease. The subtenant would have been entitled to relocation expenses when the agency acquired the property, but the agency sold the premises to a private developer under a disposition and development agreement.

The new owner allowed the tenant to remain on the premises, and therefore the subtenant retained its lease. "Had this been a simple purchase by the Agency, the . . . master lease with the landowner and petitioner's sublease would have continued uninterrupted." (*Id.* at p. 1328.) But the acquisition was effected by condemnation or the threat of condemnation with the resulting termination of the master lease and original sublease. The subtenant was able to continue conducting business because of a new lease agreement between the master lessee and purchaser from the agency. The court said that the sublessee was entitled to relocation benefits because there was a """causal connection between the acquisition [by the public entity] and the displacement""" (*id.* at p. 1331); even though the sublessee's lease had expired. The court did note, however, that "[t]his also is not a case in which a tenant was forced to move due to the natural expiration of a master lease and thus the reversion of the right of possession of real property to its original governmental owner . . . ." (*Id.* at pp. 1329-1330.) *Kong*, although not entirely supportive of plaintiff's position, does stand for the proposition that a tenant can be entitled to relocation benefits for its displacement after the expiration of a lease term, if the displacement would not have taken place but for the agency acquisition.

In the instant case, plaintiff alleges that but for the defendant Redevelopment Agency acquisition, it would not have been displaced. In addition, here the defendant Redevelopment Agency, allegedly caused the breach of the obligation to negotiate in good faith an extension.

San Diego Metropolitan Transit Development Bd. v. Handlery Hotel, Inc. (1999) 73 Cal.App.4th 517 also is not dispositive. That was an eminent domain case and it did not arise at a demurrer stage. It is not applicable to the application of the relocation statute. Also, in that case, the landlord and tenant could not agree on terms for a new lease. Here, the plaintiff pleads that it is likely there would have been a new lease, and the landlord and plaintiff were prevented by engaging in the contractually provided for good faith negotiation of a new lease. (Cf. *Pulgarin, supra,* 175 Cal.App.4th 101 [distinguishing *Handlery*].) Finally, we cannot "say that a lessee may never recover business losses beyond the expiration of the lease term, particularly when, as here, the

impending expropriation is found to be the sole reason for shortening what would otherwise have been a longer lease term in a well-established and mutually satisfactory lessor-lessee relationship." (*Redevelopment Agency of San Diego v. Attisha* (2005) 128 Cal.App.4th 357, 373.)

I recognize that defendant Redevelopment Agency has a tenable position that because the lease expired it has no relocation obligation. Indeed, if the lease expired after the acquisition by an agency, it may not have to pay relocation expenses even though the cause of a nonrenewal would be the acquisition for a public purpose. But here, plaintiff alleges that the purchase was structured to avoid the payment of relocation expenses, and there was an obligation to negotiate in good faith a lease extension. It may well be that good faith includes the refusal to extend the lease because of new development plans. And it may well be that the lease expiration would have occurred no matter when or if the defendant Redevelopment Agency acquired the property. Although a close case, I believe these issues should be resolved more appropriately at a summary judgment or trial proceeding, rather than at the demurrer level.

For the foregoing reasons, I conclude that plaintiff has stated facts sufficient to constitute a cause of action. I would therefore reverse the judgment.

MOSK, J.